The Ritz Hotel Casino Ltd & Anor v Datuk Seri Osu Haji Sukam

HIGH COURT (KOTA KINABALU) — ORIGINATING SUMMONS NO K24–105 OF 2004
IAN CHIN J
5 JULY 2005

Civil Procedure — Reciprocal enforcement of foreign judgments — Registration — Whether service of foreign process by private agent allowed — Whether enforcement of judgment for gambling debt against public policy

This was an application by The Ritz Hotel Casino Ltd and RHC Ltd, two foreign judgment creditors ('JCs') to have a judgment obtained by them in the English High Court ('the Judgment') against Datu Seri Osu Haji Sukam, the judgment debtor (JD) registered as a judgment in the High Court in Sabah and Sarawak pursuant to the Reciprocal Enforement of Judgment Act 1958 ('the Act').

The judgment was for a debt to the sum of RM7,142,859.98. The issues which arose were, *inter alia*: (a) whether there was non compliance with O 65 of the Rules of the High Court 1980 regarding service of a foreign judgment by a private agent; and (b) whether registration of a foreign judgment for a gambling debt contradicted Malaysian public policy.

Held, dismissing the application:

(1) The decision in *United Overseas Bank Ltd v Wong Hai Ong* [999] 1 MLJ 474 to disallow the service of a foreign process by a private agent had since been reversed by the Court of Appeal. Although this decision was now pending application for leave to appeal to the Federal Court, the decision of the Court of Appeal was that there was no merit in the argument that a foreign process could not be served by a private agent in Malaysia (see para 2).

(2) It is universally recognised that gambling is evil and against the teaching of religion. 'Belief in God', one of the priciples in the Rukun Negara must mean believing and following the teachings of the religion. Although gambling was allowed under license in Malaysia but it was to prevent it from being run by the underworld and it was not that it was something that was good. Anything that seeks to go against the Rukun Negara must surely be regarded as against public policy (see para 10).

(3) A casino cannot be likened to a bank. A foreign bank lending money to a Malaysian in a foreign country would not face the problem of public policy even though the bank was not licensed in Malaysia. It would be inappropriate to liken a casino with a bank to argue that since it had a licence, there should be no objection to the registering of the foreign gambling, because banking business is unlike gambling (see para 10).

[**Bahasa Malaysia summary**

Ini adalah satu permohonan oleh The Ritz Hotel Casino Ltd dan RHC Ltd, dua pemiutang penghakiman luar negara ('JCs') supaya penghakiman yang diperoleh oleh mereka di dalam Mahkamah Tinggi di England ('Penghakiman itu') terhadap Datu Seri Osu Haji Sukam, penghutang penghakiman ('JC') didaftar sebagai penghakiman di Mahkamah Tinggi Sabah dan Sarawak di bawah Akta Penguatkuasaan Penghakiman Bersaling 1958 ('Akta tersebut').

Penghakiman adalah untuk hutang berjumlah RM7,142,859.98. Isu-isu yang bangkit adalah, *inter alia*: (a) sama ada terdapat ketidakpatuhan A 65 Kaedah-Kaedah Mahkamah Tinggi 1980 mengenai penyampaian penghakiman luar negara oleh seorang agen persendirian; dan (b) sama ada pendaftaran penghakiman luar negara untuk satu hutang perjudian bertentang dengan polisi awam Malaysia.

Diputuskan, menolak permohonan itu:

(1) Keputusan dalam *United Overseas Bank Ltd v Wong Hai Ong* [1999] 1 MLJ 474 untuk tidak membenarkan penyampaian proses luar negara oleh seorang agen persendirian telah pun diakaskan oleh Mahkamah Rayuan. Walaupun keputusan ini sedang menunggu permohonan untuk kebenaran merayu kepada Mahkamah Persekutuan, keputusan Mahkamah Rayuan adalah bahawa tiada merit dalam tidak membenarkan satu proses luar negara disampaikan oleh seorang agen persendirian di Malaysia (lihat perenggan 2).

(2) Adalah diterima secara am bahawa perjudian adalah salah dan bertentangan dengan ajaran agama. 'Kepercayaan kepada Tuhan', salah satu daripada rukun-rukun dalam Rukun Negara mesti bermaksud mempercayai dan mengikut ajaran-ajaran agama. Walaupun perjudian dibenarkan di bawah lesen di Malaysia tetapi ia adalah untuk menghalang perjudian daripada dijalankan secara tidak sah dan bukan kerana ia merupakan satu perkara yang baik. Apa-apa yang menentang Rukun Negara semestinya dianggap sebagai bertentangan dengan polisi awam (lihat perenggan 10).

(3) Sebuah kasino tidak serupa dengan sebuah bank. Sebuah bank luar negara yang meminjam wang kepada seorang warganegara Malaysia yang berada di luar negara tidak mempunyai masalah polisi awam walaupun bank itu tidak di lesenkan di Malaysia. Adalah tidak sesuai untuk menyamakan sebuah kasino dengan sebuah bank dan menghujah bahawa ia mempunyai lesen dan maka pendaftaran perjudian luar negara tidak boleh di bangkang kerana hal-hal perbankan tidak serupa perjudian (lihat perenggan 10).]

Notes

For a case on reciprocal enforcement of foreign judgments, see 2(2) *Mallal's Digest* (4th Ed, 2001 Reissue) para 5042.

Cases referred to

Aspinall Curzon Ltd, The v Khoo Teng Hock [1991] 2 MLJ 484 (refd)
United Overseas Bank Ltd v Wong Hai Ong [1999] 1 MLJ 474 (refd)

Legislation referred to

Reciprocal Enforcement of Judgment Act 1958 s 5, (1)(v)
Rules of the High Court 1980 O 65

Colin Lau (Colin Lau & Co) for the judgment creditors.
Sugumar Balakrishnan (Sugumar & Co) for the judgment debtor.

Ian Chin J:

INTRODUCTION

[1] This is an application by two foreign judgment creditors, The Ritz Hotel Casino Ltd and RHC Ltd, to have a judgment obtained by them in the English High Court ('the Judgment') against the judgment debtor, Datu Sri Osu Haji Sukam, registered as a judgment of the High Court in Sabah and Sarawak pursuant to the Reciprocal Enforcement of Judgment Act 1958 ('the Act'). The Judgment is for an equivalent RM7,142,859.98. I ordered that the application be heard *inter partes* because though the initial application could be dealt with ex parte because the judgment debtor would nevertheless have the right to apply to set aside the registration of the judgment under s 5 of the Act. That being the case I was of the view that I might as well at this stage deal with the argument, if any, as to whether the registration of the judgment would be liable to be set aside. Hence the application was heard inter partes. The judgment debtor contended that the Judgment for various reasons should or could not be registered which contentions I will now turn to but only with two of them and actually only one is sufficient to dispose of the matter herein. The other was also dealt with to highlight the difficult a High Court judge faces where there are pending appeals against his decision.

NON-COMPLIANCE WITH O 65

[2] Reliance was placed on my decision in *United Overseas Bank Ltd v Wong Hai Ong* [1999] 1 MLJ 474 to argue on behalf of the judgment debtor that since the foreign process was served by a private agent on the judgment debtor in Malaysia it contravened O 65 of the Rules of the High Court 1980 and the Judgment was consequently irregular. That case concerned the service of a Singapore High Court writ by a private agent in Kuching, Sarawak, Malaysia and which I held not permissible. Unbeknown to both counsel, this case was reversed by the Court of Appeal on 26 January 2004 but thus far the grounds of decision of the Court of Appeal are still being awaited as there is a pending

application for leave to appeal against the decision of the Court of Appeal to the Federal Court which application was on 11 April 2005 adjourned indefinitely to await the grounds of decision of the Court of Appeal. In the meantime, I either postpone (1) indefinitely all cases that may crop up concerning the same issues until the grounds of decision of the Court of Appeal are known or until the matter of the appeal is dealt with by the Federal Court or (2) proceed to hear the matters relying on the ruling of the Court of Appeal though not knowing its reasons. I chose the latter course to avoid a pile up of cases.

[3] As for the over-turning of the said decision by the Court of Appeal, it may well be the end of reciprocity to Malaysia's disadvantage because while we now allow the service of a foreign process by a private agent in Malaysia we do not know how many foreign countries allow the service of a Malaysian process by a private agent in that foreign country. Worse still, we may open Malaysia to a foreign country to exercise extra-territorial jurisdiction by allowing a foreigner to sue in his own country a Malaysian in respect of, say, a contract made in Malaysia between a Malaysian and a foreigner; imagine the expense a Malaysian would be put to in having to travel to a distant country to defend himself. Be that as it may, I have to conclude relying on the said decision of the Court of Appeal that there is no merit in the argument that a foreign process cannot be served by a private agent in Malaysia. I turn now to the argument 'that the enforcement of the judgment would be contrary to public policy in Malaysia' (see s 5(1)(v) of the Act).

PUBLIC POLICY

[4] Now the judgment recovered in the English court was for a gambling debt incurred by the judgment debtor after he was allowed by the judgment creditors to gamble on credit as opposed to cash in a casino in London. Is the enforcement of such a judgment in Malaysia contrary to public policy in Malaysia? But I turn first to the question of what is 'public policy'? Pollock & Mulla on *Indian Contract and Specific Relief Act* (10th Ed) describes it in this term:

> Public Policy — The principle of public policy is this: *ex dolo malo non oritur* action. Lord Brougham defines public policy as the principle which declares that no man can lawfully do that which has a tendency to be injurious to the public welfare.

[5] There is no doubt that gambling is injurious to the pubic welfare or else there would not have been a law from time immemorial that gambling debts are irrecoverable. Not only that, two of the principles of Malaysia national philosophy called the Rukun Negara (in the Malay language), that is 'Belief in God' and 'Good Social Behavior', would mean that gambling is injurious to the public welfare as being against the Rukun Negara. The complete principles of the Rukun Negara that guide Malaysians are these:

(1) Belief in God.

(2) Loyalty to King and Country.

(3) Supremacy of the Constitution.

(4) The Rule of Law.

(5) Mutual respect and good social behavior.

[6] It is recognised that gambling and prostitution are two twin vices that we should avoid and therefore, it cannot be good social behavior to indulge in them. In multi-racial and multi-religious Malaysia, Muslims are expressly prohibited from patronizing casinos and other gambling outlets and the Qur'an forbids so in these words:

> They ask you concerning alcohol and gambling. Say: 'In them is a great sin, and some benefits for men, but the sin is far greater than the benefit. (Holy Qur'an 2:219.)

[7] Gambling is similarly prohibited by the Bible and I need only reproduce one of many verses in the Bible that says so implicitly:

> He that hastens to be rich hath an evil eye, and considers not that poverty shall come upon him. (Prov. 28:22.)

[8] The Chinese in China had from dynasty to dynasty wrestled with the problem of gambling and banning it and the Malaysian of Chinese descend also face the problem of gambling whose associate of is the loan sharks. Another civilisation that frowns upon gambling are the Hindus and I need only refer to the following couplets of the Tirukural, a 2,200-year-old South Indian Dravidian classic on ethical living and the revered scripture in South India, where they say:

> 931 Do not take to gambling, even if you can win, for your wins will be like the baited hooks that fish swallow.
>
> 932 To win once, a gambler loses a hundred times. What a way to procure happiness and prosperity!
>
> 933 Incessantly calling bets on rolling dice causes a man's rich reserves and potential revenues to run elsewhere.
>
> 934 Gambling brings on many miseries and erodes one's good name. Nothing else ends in such wretched poverty.
>
> 935 Desiring to win everything, those who love the dice, the gambling hall and their lucky hand lose it all.

936 Gambling is Misfortune's other name. Fools ensnared by her will suffer an empty stomach and distressing sorrows.

937 Spending time in the gambling hall squanders ancestral wealth and wastes personal worth.

938 Gambling will consume a man's wealth and corrupt his honesty. It will curtail his benevolence and increase his torment.

939 Those who take to gambling's fickle gain forfeit these five: raiments, riches, rations, renown and erudition.

940 The gambler's passion increases with the losses incurred. Even so does the soul's craving for life grow with the griefs suffered.

[9] The Buddhists also have a disdain for gambling and I need only quote the following passage to prove the point:

> Similarly, correct conduct was also crucial to preserving one's prosperity. In this respect, the Buddha advised Sigala to avoid six activities which would lead to the loss of prosperity that is gained through the fulfillment of one's social responsibilities and one's correct allocation of income. The six activities to be avoided are gambling, costly entertainment, associating with bad friends, laziness, consumption of intoxicants and sauntering in the streets at unseemly hours. (*Buddhism In Practice*, Dr Peter Della Santina, PhD.)

[10] I can go on with citing from other faith or religion but I do not think it is necessary as what I have mentioned is enough justification for saying that it is universally accepted that gambling is a vice. It is also universally recognised in Malaysia that gambling is evil and against the teaching of our religion and not the least of all that gambling appeals to greed, that is getting rich without having to work. Belief in God, one of the principles of our national philosophy, must surely mean believing and following the teachings of the religion. It was mentioned that gambling is allowed under licence in Malaysia but that was because it was to prevent it from being run by the underworld and it was not that it was something that was good. It is my view that any profit to be made from gambling (and from prostitution) can fairly be said to be profit from vice. In this regard, I do not see how a casino can be likened to a bank which the judgment creditors appear to argue. A foreign bank lending money to a Malaysian in a foreign country would not face the problem of public policy even though the foreign bank is not licensed in Malaysia. But it is a different proposition if a prostitute who legally practiced her trade (as it is allowed in certain countries) and had obtained a foreign judgment for services to a Malaysian. The prostitute would face the same impediment as that of casino, that is of it being against public policy since it is one of the twin vice and which is against our religious belief even though it is legal in the foreign country. Therefore, it would be accurate to equate a casino business with that

of prostitution (both being legal in many foreign countries) but whose activities are against public policy. It was totally inappropriate to liken a casino with a bank to argue that since it has a licence, there should be no objection to the registering of the foreign judgment because banking business is not a vice unlike prostitution and gambling. What is offensive and totally unfair is for the casino to allow someone to gamble on credit in order to make him loose not only his pants but the livelihood of his wife and children as in this case. It may be forgivable that the casino is able to entice someone to enter the casino and lose everything that he has on his body but not otherwise, for the reasons I mentioned earlier. I therefore cannot agree with *The Aspinall Curzon Ltd v Khoo Teng Hock* [1991] 2 MLJ 484 which allowed the registration of a foreign judgment for a gambling debt as that case never consider the matters I have mentioned. Malaysians are a God-fearing people, at least that is what the Rukun Negara, wants us to be and to allow a foreign judgment which had enticed a person to gamble on credit and to gamble away the welfare of the family and leaving the state to pick up the pieces and thus lead one away from the path God has shown us would surely be against the principle of 'Belief in God' and believing in God means eschewing gambling since it is a form of covetousness, that is to desire to be rich quickly without working. In another word, it is against the Rukun Negara. Anything that seeks to go against the Rukun Negara must surely be regarded as against public policy. As for the argument that gambling debt incurred in Malaysia would suffer the same fact in a foreign country if I do not allow the registration of the foreign judgment. My short answer would be that the world would be so much the better for it and makes for a better public policy. The world would be a much nicer place if no country would allow the recovery of a judgment for a gambling debt which debt was the result, invariably, of the debtor being enticed to gamble on credit and beyond his means. In fact, I would suggest that a law should be enacted to allow a gambler to sue a casino for having enticed him to gamble beyond his means if that is not already a common law. Malaysia may soon have casinos at its doorsteps giving easy access to Malaysians. Its populace must be protected from being enticed to gamble on credit and the only way to discourage this entrapment is to prevent such foreign judgment founded on gambling on credit from being registered and from being enforceable in Malaysia. I do no propose to refer to cases of foreign countries regarding their attitude on gambling as they do not spell out the public policy of Malaysia. In all the foreign cases referred to by counsel for the judgment creditor, they involved countries that do not have a God-fearing principle as part of their philosophy as Malaysia has. So, those cases are not relevant.

CONCLUSION

[11] In the premises, the application for registration of the Judgment is dismissed with no order as to costs. The judgment debtor is not deserving of

costs as he had engaged in an activity that his religion frowns upon and which it would be against public policy to assist him by way of awarding him costs.

Application dismissed.

Reported by D Nesh